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SENATE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
225-8191

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ERVIN ANNOUNCES HEARINGS ON
ARMY SURVEILLANCE AND FEDERAL COMPUTERS

Washington, D.C., February 8, 1971--Senator Sam J. Ervin, Jr. (D-N.C.), Chairman of the Senate Subcommittee on Constitutional Rights, today announced the dates of hearings on Army surveillance programs and other federal government data banks. Among the witnesses invited are Attorney General John Mitchell, to discuss the legal and constitutional questions involved in government data collection programs; and Secretary of Health, Education and Welfare Elliot L. Richardson and Secretary of Transportation John Volpe, to discuss data collection programs of their departments.

The text of Senator Ervin's statement is attached, as prepared for delivery in the Senate, Monday, February 8, 1971.

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PREPARED FOR DELIVERY IN THE SENATE-MONDAY, FEBRUARY 8, 1971

ANNOUNCEMENT OF HEARINGS ON
COMPUTERS, DATA BANKS, AND THE BILL OF RIGHTS

MR. ERVIN. Mr. President, I am pleased to announce that the Subcommittee on Constitutional Rights has now rescheduled hearings on Computers, Data Banks and the Bill of Rights. These will commence on Tuesday, February 23 at 10:00 a.m. and will continue on February 24 and 25, March 2, 3 and 4 and March 9, 10 and 11. They will be held in Room 318 of the Old Senate Office Building every day except March 2 when they will be in Room 1202 of the New Senate Office Building.

The Subcommittee had planned to conduct hearings last October to consider the effect on individual rights of government data banks and computer information techniques. I outlined for the Senate the purpose and scope of the Subcommittee's study on September 8, 1970.

Unfortunately, the pressure of the Senate business made it impossible for the Subcommittee to conduct the hearings with the full attention this vital subject requires. For that reason they were postponed until this time.

It has become increasingly clear that unless we take command now of the new technology with all that it means in terms of substantive due process for the individual who is computerized, we may well discover some day that the machines stand above the laws. By then, it will make no difference who mans the systems or what political party makes use of them, for the pattern of mechanized surveillance will have become so institutionalized throughout our land that it may defeat the ingenuity of the God-given powers of man to alter our national course. "Liberty" will then sound only as a word in our history books, the lamented dream of our Founding Fathers.

It was with these concerns in mind that the Subcommittee initiated its government-wide survey and investigation of computers and data banks. The overall goal of our hearings and studies therefore is four-fold: To learn, first, what Government data banks have been developed; second, how far they are already computerized or automated; third, what constitutional rights, if any, are affected by them; and fourth, what overall legislative controls, if any, are required.

We shall hear experts in computer technology discuss for us the development and application of computer systems as they affect the constitutional rights of individuals and the uses of political power in the United States.

Lead-off witnesses on February 23 will be Professor Arthur R. Miller of the University of Michigan Law School and author of "The Assault on Privacy," a comprehensive analysis of this problem just published this week. Others in the field of computer technology will include invited representatives of the computer industry, including on March 3, Robert Henderson, Vice President of Honeywell

Corporation and on February 23, an official of the International Business Machines Corporation. Robert Bigelow, attorney and chairman of the Committee on Computers and Society of the Association of Computing Machinery, and Professor of Computer Science Caxton C. Foster will testify on March 10.

A major state computerized information system will be discussed on March 10 by Dr. Robert Gallati, Director of the New York State Identification and Intelligence System. Furthermore, in his capacity as Chairman of the Project SEARCH Privacy Committee, he will discuss a major and singular report on a proposed national federal-state computerized information system under the auspices of the Department of Justice.

While much of the current controversy revolves around computerization of law-enforcement information systems and data banks on special groups, there are other data-banking devices which concern every American, for they are essential to the lives of millions. Two of these are the Social Security number and the driver's license. The complaints received by the Subcommittee indicate that these are two ^{problem} major/areas of privacy and confidentiality.

It is becoming all too clear that these are common means of computerizing individuals and thereby locating them, investigating them, monitoring their activities for many purposes, and possibly invading their privacy and violating the confidentiality of the personal records stored in government and private computers.

The Secretary of Health, Education and Welfare, Elliot Richardson, has recently expressed his concern about this and reported that he is studying the possibility that the Social Security number may be too broadly used. In a letter to me on September 15, 1970, he states:

Social Security numbers are currently being used throughout industry and government as a means of clearly identifying individuals and avoiding the confusion and mistakes which can arise when a number of individuals have common or similar names. These numbers provide a unique means of identification applicable to most individuals in the United States. . . : Despite . . . restrictions, the Department is concerned that if the Social Security number were used too broadly, such widespread use and dependence upon the number might lend itself to abuses of individual privacy. Because of this concern, the Social Security Administration is currently reviewing the policies governing the issuance, maintenance, and usage of the Social Security number.

The Subcommittee has invited Secretary Richardson to discuss this study of the uses of the Social Security number on March 11, as well as the various data banks used or sponsored by his Department. An invitation has also been extended to Secretary of Transportation John Volpe to appear on March 11 and discuss the Department's computerized national data bank of driver's license holders. This system contains information on all Americans whose licenses have ever been revoked, denied, withdrawn or suspended for any purpose.

As a data program established and expanded by Congress, one of concern to all Americans, and one developed and used cooperatively by federal, state, local and private agencies, this system should provide a useful example of the benefits and problems created by computer technology within the federal system.

Mr. President, beyond the constitutional and legal issues presented by the impact and uses of computer technology, there is a more profound question confronting the country. This is the extent to which the new computer science and information management techniques equip politicians with rapid and efficient tools for programs which have political ramifications for our entire society. Instant blacklisting, rapid cross-country exchange of dossiers, million-name master-indexes, and scientific surveillance can easily become the order of the political day in this era of systems analysis and applied scientific management techniques.

These are practices suggested by the scope of some present federal programs and they go to the heart of the constitutional exercise of First Amendment freedoms for every person in our society.

Since the issues here are of momentous concern, I believe they merit the careful scrutiny of this Subcommittee and the Senate. The hearings, therefore, have significance in several ways, for they look to the way the power of government will be exercised over the individual in decades to come -- they look even to the fate of our liberty in this century.

The Subcommittee's concern has been particularly prompted by increasing public interest and complaints about unwarranted governmental invasion of personal privacy through official surveillance and note-taking on the political and personal activities of citizens who have broken no laws.

I am reluctant to attribute unsavory political motives to these programs, but there is no doubt that they were human responses to political forces at work in our society and in our government. These official monitoring actions have been undertaken in the pursuit of a number of high-sounding federal programs, worthy in their inception. But, because of their scope, they threaten in operation to become, and in some cases actually have grown to be, monsters of the laws, stalking the privacy and trampling the First Amendment rights of individual citizens.

For example, there are the so-called civil disturbance prevention programs of the Army and other military services which were believed to require surveillance over lawful political activities of civilians. There are all the other "counter-intelligence" programs which, justified or not, the armed services believe require

surveillance and compiling of dossiers on civilians. These military activities have been discussed at length as each new revelation is made by agents who conducted the surveillance.

To get to the bottom of these complaints and learn how widespread the practices are who authorized them and why; whether or not they continue today and under what restrictions, the Subcommittee will hear a number of former military intelligence employees and agents describe their surveillance of citizens. We have invited Mr. Christopher Pyle to testify on February 24. Mr. Pyle is a lawyer and political scientist who has written widely on his experiences and observations while serving in the Army Intelligence Command.

Other agents will include Ralph Stein, who served in the civil disturbance analysis division ^{the} in Counter-Intelligence Command at Fort Holabird.

John M. O'Brien, who reported his monitoring of law-abiding citizens including political figures in Illinois, will appear on February 24, 1971, and will be accompanied by Alexander Polikoff, attorney for the plaintiffs in the suit against the Army for unwarranted surveillance of citizens in Chicago.

On February 25, Professor Morris Janowitz, Chairman of the Sociology Department, University of Chicago, will discuss such issues as the impact on the military services of their involvement in activities beyond their jurisdiction.

A number of organizations and private citizens will also testify on February 25 about their experiences and reactions to such government programs.

On March 2, 3 and 4 we shall hear representatives of the Secretary of Defense describe the programs of each of the Armed Services and component agencies of the Defense Department with respect to note-taking and record-keeping of the activities of civilians who have no dealings with the Department of Defense. In addition, they will report to us on the contents, purpose and maintenance of the Army Investigative Records Repository, a basically manual system which contains dossiers and reports on over seven million Americans who have had reason to deal with the Department of Defense for personnel, counter-intelligence, criminal, or other purposes. Since this is another major information system which is significant for many federal programs, I believe a study of the transfer exchange, retention and use of records in it will guide the Subcommittee in its analysis of other programs.

I hope the Defense Department witnesses will enlighten Congress in considerable detail on the reasons for the unprecedented reports of spying and surveillance on political figures and on politically-active citizens. I hope that they will describe in considerable detail the administrative actions they have taken --

1. To prevent unconstitutional excesses of power in the future;
2. To purge completely each of their information systems of any reports they may have improperly compiled on civilians, at least over the past twenty years;
3. To rescind in each of the services the vaguely-worded directives and memoranda issued at all levels and the regulations purporting to authorize excessive grants of surveillance powers in matters beyond the proper interests of the military.

We hope also to discover from these witnesses who else in the Federal Government received and data-banked the information compiled by the Army and other services, and what has been done to review and -- where necessary, to purge -- the files of those agencies.

In this aspect of the Subcommittee study, the basic question at issue is the power of the Executive Branch to monitor the activities of individuals when there is no probable cause to believe they have committed a crime. The largest segment of such persons will be the political dissidents of all shades of political opinion who disagree intellectually and actively with government policies or who associate with those who do. This is not a new problem in government. We have known political blacklists before. The efficiency with which it is done now makes it a vital constitutional problem as never before.

While I find myself at loggerheads with many of these Americans, both with respect to their ideas and with respect to the means used to express those ideas, the vitality of our political system and the First Amendment rights of all of us now and in the future depend on the extent to which their rights are protected.

For this reason, the Subcommittee has extended an invitation to the Attorney General, as chief legal officer of the Government, to discuss for the Congress what constitutional power rests in the Executive Branch and its respective department heads to conduct surveillance over such persons and to enter them in federal data banks of the Justice Department and other agencies of government.

I believe these hearings will better enable the public, the press, the Congress and Executive Branch officials to understand the needs and purposes of government and the constitutional limits in our society to uses of the power of that government.

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ATTACHMENT: Letter to the Attorney General

February 2, 1971

Honorable John N. Mitchell
The Attorney General
Washington, D. C.

Dear Mr. Attorney General:

The Constitutional Rights Subcommittee, in continuation of its study of unwarranted invasion of privacy, has now scheduled hearings to study the impact on the Bill of Rights of federal data banks on citizens. The hearings will focus on two aspects of this subject which are of urgent concern to Congress and the public. One is the extent to which the constitutional rights of citizens may be violated by executive department programs requiring intelligence data banks for monitoring the political attitudes, beliefs, and personal behavior of law-abiding Americans. The second, and broader problem, is the extent to which the requisites of due process are being observed in the increasing governmental use of computers to run nation-wide information systems on individuals.

As chief legal officer of the Federal Government, your opinion on these constitutional issues would be both vital and invaluable to the Congress as it seeks to determine the need for legislation in this area of the law. Therefore, the Subcommittee hereby extends to you an invitation to present your views on this subject on Tuesday, March 9 at 10:30 a.m. in Room 318 of the Old Senate Office Building.

The Subcommittee would like to know what constitutional authority executive branch officials possess to order or conduct surveillance and to acquire information on lawful political activities, personal beliefs, and private lives of citizens where no probable cause exists to believe they are guilty of any crimes. Your opinion as Attorney General on this issue is especially important since the Subcommittee's government-wide survey of such federal programs has elicited varied interpretations of authority by officials who cite in turn the Constitution, Presidential directives, statutes, or other rationale. So far, these responses have been conflicting, confusing, at times highly dubious, and in several instances, downright implausible. I believe your testimony on the power of the executive branch departments, including that exercised by the Justice Department, will clarify the constitutional and legal issues immeasurably.

One program of major concern has been the Army's collection, analysis and maintenance of information on civilians in its so-called civil disturbance prevention program. During our investigation of charges of violation of First Amendment rights, Congress has been informed that the Army has cut back its efforts and will henceforth depend on the Justice Department for certain information on individuals and events in this program and for cooperation in covert surveillance. It would be most helpful to learn from you the degree to which the Justice Department has indeed assumed responsibility for this program and for others of concern to the military, as well as for the surveillance of law-abiding citizens which the Army heretofore has deemed necessary.

Secondly, we should appreciate a description of the interdepartmental Delimitation Agreements governing the respective roles of the Armed Services and the Justice Department in investigation of civilians and in retention of dossiers in non-criminal cases. It is hoped that your discussion will include the basis for these agreements and the reason for them.

In the Subcommittee's study of the problems raised by computerized government files on individuals, it would be most helpful if you or your representatives would elaborate on the Department's October 1, 1970 reply to my letter of June 9, 1970. We should like to know what, if any, due process guarantees surround computerization of your major systems, including the National Crime Information Center and Project SEARCH.

In this connection, I believe the recent report by the Law Enforcement Assistance Administration indicates a highly commendable initiative and concern by your Department for the right to privacy in computerized data systems. Issued at a time when computerized dossiers are causing increased public alarm, this report on privacy considerations in Project SEARCH provides valuable insight and offers worthwhile recommendations which should be studied by every Congressional committee and by all federal and state officials contemplating data systems.

The Subcommittee will therefore welcome for the hearing record a description of the Project SEARCH report together with an account of the future plans for the nationwide computer law-enforcement program envisioned by Project SEARCH.

Your testimony, by defining the constitutional scope of the executive power, should guide and enlighten both the Executive Branch and the Congress. Only if all of the facts are candidly set forth by government will any excesses in these programs be limited and will the current public fears be allayed about unwarranted surveillance and official invasion of personal privacy.

I believe you will agree that the interest of the Administration can only be served and the preservation of liberty enhanced by a better public understanding of the needs of government and their relation to the constitutional rights of citizens. I hope you will find it possible to accept this invitation to appear before the Subcommittee and assist us in our investigation.

With kindest wishes.

Sincerely yours,

Sam J. Ervin, Jr.
Chairman